IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

Crl.MC.No. 1055 of 2007()

CRIME NO.99/2005 OF CHAKKARAKKAL POLICE STATION

PETITIONER: ACCUSED

CHERIPATH IBRAHIM, S/O.ABDULLA,
AGED 60 YRS, CHERIPATH HOUSE, CHELERI AMSOM,
KARAYAPURAM DESOM, KANNUR TALUK, KANNUR DISTRICT.

BY ADV. SRI.C.A.JOSEPH

RESPONDENTS: STATE & DEFACTO COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. AMINA, W/O.ABDULLAH, AGED 52 YEARS,
KANIMMAL HOUSE, MUNDERI AMSOM DESOM,
KAIPPAKKAL, KANNUR TALUK.

BY ADV. SRI.M.A.SHIHAB
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1055 of 2007

Dated this the 30th day of March 2007

O R D E R

The petitioner is the sole accused in a prosecution for offences punishable under Sections 341, 323, 354 and 294(b) I.P.C. All offences except the offence punishable under Section 294(b) are compoundable. The second respondent is the defacto complainant.

2. The petitioner asserts and the respondent through her counsel accepts that the dispute between the parties have been settled amicably and that the second respondent has compounded all offences allegedly committed by the petitioner. Cognizance has been taken on the basis of the final report submitted by the police after due investigation.

3. The prayer of the petitioner and the second respondent jointly is that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioner on the ground that the disputes have been settled. Since the alleged offences include the offence punishable under Section 294(b) I.P.C, which is not declared by law to be compoundable,

the learned counsel for the petitioner was requested to explain how the composition can be accepted and reckoned as a sufficient ground to quash the proceedings.

4. The learned counsel for the petitioner places reliance on the decision in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386]. The learned counsel for the petitioner contends that the powers under Section 482 Cr.P.C are sweeping at wide in its amplitude and that in a fit case where the interests of justice requires that the proceedings must be quashed, Section 320 Cr.P.C cannot be reckoned as a fetter on such powers under Section 482 Cr.P.C.

5. B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386], I accept, is authority for the proposition and that at times and in an exceptional case, the interests of justice may transcend the interests of mere law and in such circumstances, the provisions of Section 320 Cr.P.C cannot be reckoned as a fetter on the wide and sweeping powers of the court under Section 482 Cr.P.C. to do justice.

6. The short question is whether the composition of the offence under Section 294(b) I.P.C can be accepted. It has often

been repeated that the dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386] does not at all obliterate the distinction between compoundable and non-compoundable offences. The mere fact that the parties have without the authority of law compounded a non-compoundable offence cannot, by itself, be reckoned as a sufficient ground to invoke the powers under Section 482 Cr.P.C. The counsel were requested to explain the peculiar circumstances in this case which would justify the invocation of the powers under Section 482 Cr.P.C with the help of the dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386].

7. I have been taken through the F.I.S of this case. The counsel points out that essentially and in its core the dispute is one between two neighbours. The short dispute is about the width of a pathway through the property of the complainant. While the accused claimed a motorable way, the complainant was prepared to give a way for the accused to go on foot. This essentially was the dispute and the neighbours have settled their disputes harmoniously. The counsel further points out that even going by the allegations, the charge under Section 294(b) I.P.C

may not stand as admittedly the alleged dispute did not take place in a public property and took place in the private land belonging to the complainant.

8. Having considered all the relevant inputs, I am satisfied that this is an eminently fit case where powers under Section 482 Cr.P.C can be invoked to bring to premature termination this prosecution between two neighbours who have settled their disputes harmoniously.

9. In the result, this Criminal Miscellaneous Case is allowed. C.C.No.205/2005 pending before the learned Chief Judicial Magistrate, Thalassery now pending as L.P.C.No.33/06 is hereby quashed. Proceedings, if any, pending under Section 446 Cr.P.C will, of course, have to continue.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006